

**STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
OLYMPIA, WASHINGTON**

REQUEST FOR QUALIFICATIONS AND QUOTATIONS

PROJECT TITLE
Comprehensive Web Consulting/Marketing Services

EXPECTED TIME PERIOD FOR CONTRACT
July 1, 2007 through June 30, 2009
(With possible extension for two additional one-year periods beyond
June 30, 2009 at the sole discretion of the Department.)

BIDDER ELIGIBILITY
This procurement is open to those Bidders who satisfy the minimum qualifications
stated herein and are available for work in Washington State.

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1. INTRODUCTION

1.1 Purpose and Background

The purpose of this RFQQ is to solicit proposals from qualified firms to provide web development, marketing and consulting services as described in Exhibits B-1 (Tourism including Film and Video Scope of Work) and B-2 (Business and Project Development and International Trade Scope of Work) for all websites within the International, Trade and Economic Development Division of the Department of Community Trade and Economic Development (Department) and other divisions within the Department as needed.

A recent transition in the Department's organizational focus has created an opportunity to integrate marketing activities of the Business and Project Development, International Trade, Film and Video and Tourism units. There is a need to identify strategy and tactics of all internet programs of each unit to create a more coordinated approach that leverages existing efforts and markets the state more consistently. It is expected that the Contractor(s) selected under this RFQQ will be responsible for assisting the Department in creating graphic and functional web standards to achieve a more integrated approach among Department units.

Procurement is expected to result in the award of one contract, although the Department reserves the right to award multiple contracts. This RFQQ is being conducted in compliance with the policies and procedures of the Office of Financial Management (OFM) as well as other applicable state laws and regulations. OFM must provide final contract approval.

1.2 Mandatory Requirements

The Bidder must be licensed to do business in the state of Washington and meet the following requirements:

- Have an office located in western Washington with a maximum two-hour drive to the Department located in Olympia.
- Work cooperatively and collaboratively with the Department's Information Service Division and GIS Planning Inc., the developer that maintains the GIS portion of ChooseWashington.com web site.
- Experience in managing sub-contractors for complex web projects.
- Experience in Agile project management and software development methodologies.
- At least 5 years experience with Systems Analysis, Programming and Object Oriented Application Design Concepts.
- Experience in Relational Database Design concepts, including SQL Server 2000/2005, SQL Reporting Services, and Microsoft Access 2003/2007 application development, Classic ASP, ASP.NET 1.1/ 2.0, VB.NET, C#, C++, COM, Multi-Server Applications, Flash, Java Script, AJAX (for .NET), Microsoft's Virtual Earth, Microsoft's MapPoint Web Service, HTML/CSS.
- Development experience using the Microsoft Visual Studio.Net 2005 development environment including knowledge of the Microsoft Team Foundation Server/Team Suite development environment. The contractor will be expected to provide their own Team Foundation Server and Team Suite Licenses.

- Experience in Microsoft Analysis Services 2005, MDX queries and expressions, OLAP Database Design Concepts.
- Experience in SOA Architecture and Microsoft BizTalk Server 2006 application development including XML schema development, SOAP, ASP.NET XML Web Service programming.
- Experience in Microsoft Office SharePoint Portal Server 2007, Office 2007 productivity suite, application integration using Microsoft InfoPath 2007 and the Microsoft Office Business Scorecard Manager 2005.
- At least two years experience implementing, customizing and extending Microsoft Dynamics CRM.
- At least two years experience developing and maintaining content, graphics, architecture, and effectiveness measurements for consumer oriented websites.
- Proven experience developing or maintaining web-based interactive GIS mapping programs, such as Microsoft Virtual Earth in conjunction with Microsoft MapPoint Services.
- Development experience with web casting, web conferencing, web blogs, webinars, online training.

1.3 Funding

The overall budget available for the life of this contract shall not exceed \$2,800,000 (two million eight hundred thousand dollars). It is expected that a monthly fee will be charged for specific continuous activities required on a monthly basis. The contract will define a list of categories of service that are to be covered by a monthly fee. Each month the Department and the Contractor will develop a work plan incorporating services from that list to be approved by the Department each month. All other activities will be based on project estimates that specify deliverables and timelines and that must be approved in writing by the Department prior to any expenditure of funds and may not be changed without prior written Department approval.

Any contract(s) awarded as a result of this procurement is contingent upon the availability of funding.

No Contractor selected under this RFQQ is assured of receiving any minimum amount of business.

1.4 Period of Performance

The period of performance of any contract(s) resulting from this RFQQ is scheduled to begin on or about July 1, 2007 and end on June 30, 2009. The Department reserves the option at its sole discretion to extend the contract for two additional one-year periods.

2. GENERAL INFORMATION

2.1 Definitions

Definitions for the purposes of this RFQQ include:

Department – The Department of Community, Trade and Economic Development is the Department of the state of Washington that is issuing this RFQQ.

Bidder – Individual or company submitting a proposal in order to attain a contract with the Department.

Contractor – Individual or company whose proposal has been accepted by the Department and is awarded a fully executed, written contract.

Proposal – A formal offer submitted in response to this solicitation.

Request for Qualifications and Quotations (RFQQ) – Formal procurement document in which services needed are identified, and firms are invited to provide their qualifications to provide the services and their monthly and/or hourly rates.

Subcontractor – any person not in the employ of the Contractor; performing work which is the responsibility of the Contractor under a contract resulting from this RFQQ.

RFQQ Coordinator – Individual noted in Section 3.1 or any other designee.

2.2 ADA

The Department complies with the Americans with Disabilities Act (ADA). Bidders may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

2.3 Rights of Ownership and Confidentiality

The Department shall own all application development documentation and source code, data collected and stored and other forms and reports produced in the performance of services rendered under contract from this procurement.

3. PROCUREMENT RULES AND PROCEDURES

3.1 RFQQ Coordinator

The RFQQ Coordinator is the sole point of contact in the Department for this procurement. The RFQQ will be posted at <http://www.cted.wa.gov/site/1026/default.aspx> for potential Bidders. All communication between the Bidder and the Department upon receipt of this RFQQ shall be with the RFQQ Coordinator, as follows:

Name: Linda Mitchell
Mailing Address: CTED/EDD
128 - 10th Avenue SW
PO Box 42525
Olympia, WA 98504
Phone Number: 360-725-4182
Email Address: lindami@cted.wa.gov

Any other communication will be considered unofficial and non-binding on the Department. Bidders are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Bidder.

3.2 Conditions

Proposals are invited and will be accepted subject to the following conditions and rights of the Department. The Contractor is specifically notified that failure to comply with any part of the RFQQ may result in rejection of the entire proposal as non-responsive.

3.3 Estimated Schedule of Procurement Activities

Issue Request for Quotes and Qualifications	February 22, 2007
Dates For Submission of Written Questions	February 23-March 19, 2007
Date for Response to all Written Questions	March 21, 2007
RFQQ Proposals Due	April 9, 2007, 12 NOON PST
Evaluate RFQQ Proposals	April 9-17, 2007
OPTIONAL:-Bidders Notified of Oral Presentations	April 17, 2007
Finalist Oral Presentation Dates	April 23-27, 2007
Evaluation of Presentations	April 30-May 4, 2007
Announce "Apparent Successful" Contractor;" Notify Unsuccessful Bidders	May 7, 2007
Negotiate Contract	May 8 –May 31 2007
Finalize and File Contract with OFM	June 1-30, 2007
Begin Contract Work	July 1, 2007

The Department reserves the right to revise the above schedule. Any such revision will be posted at <http://www.cted.wa.gov/site/1026/default.aspx>, and Bidders are responsible for reviewing this website for any updates.

3.4 Proprietary Information/Public Disclosure

Materials submitted in response to this competitive procurement shall become the property of the Department.

All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the Assistant Director of the Department and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.56.010, "Public Records."

A charge will be made for copying and shipping, as outlined in RCW 42.56.120. No fee shall be charged for inspection of contract files, but forty-eight (48) hours notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

3.5 Contractor's Questions and Department's Responses

All questions and requests for clarifications pertaining to this RFQQ must be submitted in writing via email to the RFQQ Coordinator within the dates specified in Section 3.3 - Estimated Schedule of Procurement Activities. Questions received after the final date stated in the Procurement Schedule will not be answered in the Department's responses.

Department responses to all questions and requests for clarification received by the deadline date will be posted on March 21, 2007 at <http://www.cted.wa.gov/site/1026/default.aspx>.

3.6 Revisions to the RFQQ

The Department reserves the right to revise this RFQQ. In the event it becomes necessary to revise any part of this RFQQ, addenda will be posted at <http://www.cted.wa.gov/site/1026/default.aspx>, and Bidders are responsible for reviewing this website for any updates.

The Department also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract.

If a conflict exists between the original RFQQ and the revised RFQQ, the document having the latest date shall have precedence. For this purpose the published Contractor's Questions and Department's Responses shall become part of this RFQQ.

3.7 Minority & Women-Owned Business Participation (MWBE)

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals are 10 percent for MBE and 4 percent for WBE for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360-753-9693 to obtain information on certified firms.

3.8 Acceptance Period

Proposals must provide 60 days for acceptance by the Department from the due date for receipt of proposals.

3.9 Most Favorable Terms

The Department reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that the Bidder can propose. The Department does reserve the right to contact a Bidder for clarification of its proposal.

The Bidder should be prepared to accept this RFQQ for incorporation into a contract resulting from this RFQQ. Contract negotiations may incorporate some or all of the Bidder's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the Department.

3.10 Costs to Propose

The Department will not be liable for any costs incurred by the Bidder in preparation of a proposal submitted in response to this RFQQ, in conducting a presentation, or any other activities related to responding to this RFQQ.

3.11 Obligation to Contract

This RFQQ does not obligate the state of Washington or the Department to contract for services specified herein.

3.12 Rejection of Proposals

The Department reserves the right, at its sole discretion, to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQQ.

3.13 Commitment of Funds

The Assistant Director of the Department or his/her delegate are the only individuals who may legally commit the Department to the expenditures of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

3.14 Proposal Due Date and Delivery Location

All required sections of the proposal must be received by the RFQQ Coordinator not later than 12:00 Noon, Pacific Standard Time (PST) April 9, 2007. Proposals received after that time and date will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the Department and will not be returned.

Proposals must be delivered by email addressed to the RFQQ Coordinator, Linda Mitchell, at lindami@cted.wa.gov. Neither the Department nor the RFQQ Coordinator assumes any responsibility for any problems with email delivery either within or outside the Department that would affect proposal delivery. Receipt of the proposal by the time and date specified in the RFQQ is the sole responsibility of the Bidder.

Proposals as delivered must include all parts and components in a format defined in the Instructions for Proposal Preparation, Section 4.0. Incomplete proposals will be rejected as non-responsive.

3.15 Proposal Evaluation

The Department will establish an evaluation team to review and score all responsive proposals received by the closing date. The evaluation process is as follows:

- Proposals will first be reviewed for compliance with the requirements and instructions set forth in this RFQQ.
- Proposals will then be reviewed by the RFQQ Coordinator for compliance with the mandatory requirements as described in Section 1.2 Mandatory Requirements, Section 4.3, Letter of Submittal, Section 5.1. Business Information, and that the Certification and Assurances Form, Exhibit A, is attached.
- Proposals that meet the mandatory requirements will be reviewed and scored by the Department's evaluation team, consisting of the Department and any other sources deemed necessary by the Department.

3.16 Waive Minor Administrative Irregularities

The Department reserves the right, at its sole discretion, to waive minor Bidder administrative irregularities.

4. INSTRUCTIONS FOR PROPOSAL PREPARATION AND SUBMITTAL

4.1 Proposal Organization

Proposals must be submitted in three parts as follows:

1. Letter of Submittal and Certifications and Assurances Form (Exhibit A of this RFQQ)
2. Qualifications Section
3. Quotation Section

4.2 Proposal Format

The Bidder's proposal, in its entirety, must be sent by email to Linda Mitchell, the RFQQ Coordinator in Olympia, Washington (lindami@cted.wa.gov), no later than 12:00 Noon PST, Monday, April 9, 2007. **The subject line of the email must read "Web RFQQ."** Bidders assume the risk of being able to deliver the proposal in described format by the deadline stated. The proposals must be submitted electronically, utilizing PDF Acrobat technology. All other supplemental documents, attachments and exhibits must also be delivered in electronic format utilizing PDF Acrobat technology. All formats should be in the standard 8-1/2 by 11 inch paper size. Be sure to include the Bidder company name, Bidder representative name, address, telephone number and email address at the beginning of the document. Do not send your PDF documents in zip format.

4.3 Letter of Submittal (Mandatory)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQQ) must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship.

The Letter of Submittal must be written on the Contractors' official letterhead. It must include the following:

- A. An itemization of all materials and attachments included in the email proposal in response to the RFQQ.
- B. A statement that the Bidder meets all mandatory requirements set forth in this RFQQ.
- C. A statement that the Bidder believes the proposal addresses all the requirements set forth in the Scopes of Work.
- D. The Contractor's guarantee that the proposal as submitted, shall remain in full force and effect for a specified period of time, which must be at least 90 days from the proposal due date as specified in the RFQQ.

5. QUALIFICATIONS SECTION

The Qualifications Section of the proposal must contain information that will demonstrate the Bidder's ability to accomplish the services as described in Exhibits B-1 and B-2 (Scopes of Work.)

The Qualifications response is to be submitted in three sections as follows: 1) Business Information; 2) Experience and Staffing; and 3) Subcontractor Management. The optional fourth section would include proof of certification for minority- and women-owned businesses participating on the project.

Items in this section marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

5.1 Business Information (Mandatory)

- A. State the name of the company, address, phone number, fax number, email address, legal status of entity (ownership), and year entity was established as it now substantially exists.
- B. Provide the firm's Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
- C. How many employees constitute your permanent staff? Name the firm's principals and their roles.
- D. If your firm/organization is located in more than one city, please list the others in which it operates.
- E. What is the total annualized billing of the office making this proposal?
- F. List your principal accounts, length of time that you have held each, approximate current annual billing of each, and business classification. Indicate all new clients acquired over the last three years. Indicate all public accounts acquired over the past three years.
- G. List the clients your office has lost in the past three years and approximate annual billings for each. Indicate all accounts lost that are travel or tourism-related. Indicate all public agencies.
- H. Indicate the average number of accounts that you have held over the preceding 12-month period in each billing category:

_____ Under \$250,000 _____ Between \$250,000 and \$500,000 _____ Over \$500,000

- I. Bidder must provide a comprehensive list of financial references. The Department may, at its discretion, contact each reference to ensure that the Bidder is financially solvent and responsible.
- J. Identify any State employees or former State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Bidder's organization. If following a review of this information, it is determined by the Department that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.
- K. If any member of the Bidder's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the DEPARTMENT previously or currently employed by, job title or position held, and separation date.
- L. If the Bidder has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Bidder, or (b) litigated and such litigation determined that the Bidder was in default.
- M. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Bidder's position on the matter. The Department will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If the Bidder has experienced no such termination for default in the past five years, so indicate.

5.2 Experience (Scored) - 100 Points Maximum

- A. Describe the firm's, or its subcontractor's, experience in providing web consulting and marketing services that demonstrate its ability to meet the mandatory requirements, as described in Section 1.2 of this RFQQ and provide the web development, creative, marketing, and technical services that are described in Exhibits B-1 and B-2 (Scopes of Work.) List the number of years the firm has provided each of the services described. (25 points)
- B. Describe the firm's experience in developing and maintaining websites that sell products or services to mass consumer and business audiences. Explain how these websites were evaluated for effectiveness. (15 points)
- C. Describe the firm's experience in developing an integrated GIS mapping web system. (20 points)
- D. Describe the firm's experience in working cooperatively with other marketing and/or public relations firms to develop a branded website. (15 points)
- E. Describe the firm's experience in implementing Microsoft Customer Relationship Management (MS-CRM). (5 points)

- F. Describe the firm's experience in customizing MS-CRM. (5 points)
- G. Describe the firm's experience in extending MS-CRM or interfacing it with other applications. (5 points)
- H. Provide a list of certifications that the firm currently has. (up to 10 points)

5.3 Staffing (Scored) - 50 Points Maximum

- A. Provide names and descriptions of those who Bidder proposes to work on the project, as well as the proposed project team structure. List the year's of experience of each team member in providing services described in the RFQQ. Include this information for any subcontractor(s). Also include the name of the lead contact for the contract. (25 points)
- B. List any subcontractors you may want to include to complete your roster of services. Describe what services each would provide. (10 points)
- C. List references names, addresses and telephone numbers of all business for which work similar to that described in this RFQQ has been accomplished. Provide the web address for each business listed. CTED may at its sole discretion, contact these as references. Bidder gives CTED permission to do so. (25 points)

5.4 Subcontractor Management (Scored) - 10 Points Maximum

Describe the firm's ability to manage subcontractors and give examples of how past projects utilizing subcontractors have been successfully completed. (10 points)

5.5 OMWBE Certification (Optional and Not Scored)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

6. QUOTATIONS SECTION

6.1 Identification of Costs (Scored) - 40 Points Maximum

The quotations section must list all hourly rates or monthly fees for services identified in Exhibits B-1 and B-2 (Scopes of Work), of this RFQQ. Any monthly fee must indicate the types of services that are covered by that monthly fee and indicate what percentage of that fee would be charged to provide ongoing services for Tourism and what percentage would be charged to provide ongoing services for Business and Project Development and International Trade. In addition to the hourly or monthly costs for service categories that would be included under the contract, also include any other costs that might be incurred including administrative fees for managing outside supplier or subcontractor services, or any other applicable fees that would be charged under this contract.

Scoring will be based on 1) an hourly composite rate and 2) a monthly composite rate.

Travel costs must not exceed the published Department per diem rates, and the Department will not reimburse travel to or from the Contractor's location to the Department Offices in Olympia or Seattle for routine meetings or other routine contact necessary under the proposed contract.

The Department will not pay a commission for any outside or subcontractor services or media, but will pay an administrative fee for subcontractor management.

Bidders are required to collect and pay Washington State sales tax, if applicable.

The evaluation process is designed to award this procurement not necessarily to the Bidder of least cost, but rather to the Bidder whose proposal best meets the requirements of this RFQQ. Bidders are encouraged, however, to submit proposals that are consistent with state government efforts to conserve state resources.

7. PROPOSAL EVALUATION

7.1 Evaluation Procedure

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team to be designated by the Department, which will determine the ranking of the proposals.

The Department, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

7.2 Evaluation Weighting and Scoring

The following weighting and points will be assigned to the proposal for evaluation purposes:

Qualifications Section – 80%:	160 points
<i>Firm Experience</i>	<i>maximum 100 points</i>
<i>Staff Qualifications</i>	<i>maximum 50 points</i>
<i>Management of Subcontractor</i>	<i>maximum 10 points</i>
Quotation Section – 20%	40 points
Sub-Total	200 points
GRAND TOTAL	200 POINTS

8. ORAL PRESENTATIONS

The top-scoring firm(s) Bidders may be contacted to schedule a date, time, and location for an oral presentation, should CTED choose, at its sole discretion, to include such oral interviews as part of this process. Commitments made by the Bidder at the oral interview, if any, will be considered binding.

Finalists will receive a set of questions to which they are expected to respond during the oral presentation. Finalists can also expect additional questions not provided in advance to be presented to them during their oral presentation. The oral presentations will be scored and upon evaluation of all oral presentations, award(s) to one or more contractors will be made. The final decision of award will be based solely on the oral interview. The scores for Qualifications and Quotations will not be considered in making the final decision.

8.1 Notification to Bidders

Firms whose proposals have not been selected for further negotiation or award will be notified by email.

8.2 Debriefing of Unsuccessful Bidders

Upon request, a debriefing conference will be scheduled with an unsuccessful Bidder. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Bidder letter is emailed to the Bidder. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Bidder's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

8.3 Protest Procedure

A Bidder for an Information Technology (IT) acquisition that falls within the statutory authority of the Information Services Board (ISB) may file a protest with the issuing agency following the acquisition process. If the Bidder is not satisfied with the agency's decision, it may file an appeal of the agency's decision. If the appeal is made to the ISB, the ISB Chair will notify the parties to an appeal whether these procedures will be used as written or modified based on the circumstances of the appeal before the ISB. Agencies should consult with their Department of Information Services (DIS) Senior Technology Management Consultant for advice and assistance during the appeal process.

The following procedures must be followed to file a protest:

A. General

A Bidder for an IT acquisition that falls within the statutory authority of the ISB may file a protest with an agency following the acquisition process within five business days after the Bidder has had a debriefing conference. Any issues raised by the protesting party after the five-day period will not be considered. The grounds for the protest are set out in the ISB Information Technology Investment Standards. Protests may be made on only these grounds:

1. Arithmetic errors were made in computing the score,
2. The agency failed to follow procedures established in the solicitation document, the IT Investment Policy, the IT Investment Standards, or applicable state or federal laws or regulations, or
3. There was bias, discrimination, or conflict of interest on the part of an evaluator.

Following an agency's final protest decision, a Bidder/Vendor must send their protest within five business days after receiving notification of the agency's final decision. If the appeal is made to the ISB, the ISB Chair establishes the process for each appeal presented and may use these procedures or modify them to fit the circumstances of a particular appeal. When an appeal is presented, the ISB Chair will notify the parties whether the procedures will be used as written or modified based on the circumstances of the appeal before the ISB. Agencies should consult with their DIS Senior Technology Management Consultant for advice and assistance during the appeal process.

B. Appeal Panel

The Chair of the ISB will appoint an Appeal Panel to review the appeal and make recommendations to the ISB Chair to resolve the appeal. No member of the Appeal Panel may have a financial interest in or potential conflict related to the outcome of the appeal process. The ISB Chair will appoint one of the Appeal Panel members to serve as the Appeal Panel Chair.

C. Appeal Panel Chair

The Appeal Panel Chair is responsible for implementing the procedures used during the appeal process, drafting the Appeal Panel's recommendation, and forwarding the recommendation to the ISB Chair. The Appeal Panel Chair has the authority to make exceptions to these procedures. All exceptions will be documented in writing.

D. Appeal Panel Documentation

1. Number of Copies. Each of the parties to the appeal or their designated representative will provide a minimum of six copies of their written position summary to the DIS Deputy Director of the Management and Oversight of Strategic Technologies Division (MOSTD) for consideration by the Appeal Panel not later than five business days before the date of the Appeal Panel proceeding. In addition, each party will provide a copy of such documents to the other party on the same day.

2. **Format of Documents.** Each party to an appeal will submit a written protest, stating the basis of its appeal position, using the scope and format guidelines set out in the IT Investment Standards as a guide. A written protest must contain the facts and arguments upon which the protest is based and must be signed by a person authorized to bind the vendor to a contractual relationship. At a minimum, this must include:
 - a) The name of the protesting vendor, its mailing address and phone number, and the name of the individual responsible for submission of the protest.
 - b) Information about the acquisition and the acquisition method and name of the issuing agency.
 - c) A specific and complete statement of the agency action(s) protested.
 - d) A specific reference to the grounds for the protest.
 - e) A description of the relief or corrective action requested.
 - f) A copy of the issuing agency's written decision on the protest.
3. **Written Position Summary Format.** The written summary is limited to 25 double-spaced pages, excluding attachments. All attachments to the written summary will be referenced in the summary and indexed. Each written summary will be submitted in a three-ring binder, marked with the name of the party submitting the written summary, an index in the front with references to the pages of the written summary, and an index of the attachments. Attachments will be numbered 1, 2, 3, etc. The written summary may include attachments such as: declarations from parties having direct knowledge of the contract bid process, documents related to the contract process, etc.
4. **Confidential Documents.** If an attachment is asserted to be confidential, or contains proprietary information, then the entire attachment will be separated by a piece of colored paper, numbered C1, C2, C3, etc., and the individual pages deemed to be confidential or proprietary will be marked. Attachments containing information marked confidential or proprietary must also be marked in the index.
5. **Appeal Panel Transcript.** DIS will arrange for a transcript of the Appeal Panel proceedings.

E. Notices

The DIS Deputy Director of MOSTD is responsible for preparing Appeal Panel notices to inform each party of the date, time, and location of the proceeding and the procedures that will be used during the proceeding.

F. Appeal Panel Presentations

The Appeal Panel Chair will begin the proceeding by communicating any ground rules pertinent to the proceeding and will ask the parties if there are any concerns or questions regarding the Appeal Panel procedures. Additionally, the Appeal Panel Chair will inform the parties of the next steps that the panel will take once the panel proceedings are concluded. Each party will have 20 minutes to make its initial presentation, and 10 minutes of rebuttal time following the

other party's presentation. After each presentation, the Appeal Panel may ask questions of each party for an unlimited amount of time. Any questions or concerns regarding the procedures during the proceeding will be addressed to the Appeal Panel Chair.

G. Appeal Panel Remedies

The Appeal Panel has the ability to hear the concerns of each party related to an appeal following the acquisition and protest process; such concerns will be limited to the issues raised in the initial protest in accordance with the permitted grounds for protest listed in the Information Technology Investment Standards. The Appeal Panel does not have the authority to award contracts or to disclose information deemed confidential by a party. The Appeal Panel makes recommendations to the ISB Chair, who is authorized to decide the appeal.

H. Conflict of Interest/Confidentiality

All Appeal Panel members and ISB staff involved in the appeal process will be required to sign a document certifying their lack of conflict of interest and understanding regarding the treatment of confidential or proprietary information submitted for consideration by the Appeal Panel.

I. Ex-Parte Communications

Ex-Parte communications are prohibited during the appeal process. Concerns regarding ex parte communications will be addressed first to the DIS Deputy Director of MOSTD, then to the Appeal Panel Chair.

J. Final Decision

Once the recommendation of the Appeal Panel is forwarded to the ISB Chair, the ISB Chair will make a final decision. Certified copies of the final decision will be sent to each party, the DIS Deputy Director of MOSTD, and the members of the Appeal Panel.

K. Competitive Contracting

If the protest to the ISB involves a contracting process that falls within the Competitive Contracting rules under chapter 41.06 RCW and chapter 236-51 Washington Administrative Code, the complaint must first be made to the agency, which will investigate and render a preliminary decision. The preliminary decision is then forwarded to the ISB for review within five business days after receipt of the preliminary decision. The ISB Chair will appoint an Appeal Panel, which will render its findings and recommended decision to the ISB Chair, and the ISB Chair will send a final decision to the agency. The agency will adopt the ISB's final decision as the agency's final decision. The final agency decision may then be appealed to the administrative law judge as an administrative proceeding as set out in WAC 236-51. In protests involving competitive contracting, the ISB may expand the scope of the appeal to include an appeal of the solicitation and award requirements set out in WAC 236-51.

L. World Trade Organization (WTO) Government Procurement Agreement

If the protest involves a contract that falls within the WTO procurement requirements, the Appeal Panel and ISB Chair will use the guidelines published in the WTO Government Procurement Agreement in addition to these procedures to resolve the protest.

9 RFQQ EXHIBITS

Exhibit A - Certifications and Assurances

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt and the Department may accept it without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. Any exceptions to these assurances are described in full detail on a separate page and attached to this document.
5. I/we understand that the Department will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the Department, and I/we claim no proprietary right to the ideas, writings, items or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Bidder or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

Signature of Bidder_____

Title_____Date_____

Exhibit B-1 - Tourism Scope of Work

The Contractor will be expected to provide ongoing development and maintenance services for the current tourism websites and may be required to create additional websites at the direction of the Department. The current websites are:

- www.experiencewashington.com (consumer site),
- www.experiencewashington.com/industry (tourism industry site), and
- www.experiencewashington.com/pressroom (pressroom site).

The Contractor will provide specific web services for the Tourism Office as follows:

- A. With the Department develop a comprehensive annual web strategic plan for all tourism websites that shall identify objectives, describe approaches to achieve an integrated brand creative and content approach for all websites, and shall recommend any new initiatives to improve website performance in meeting the overall Tourism Office goals and objectives that are specified in the tourism strategic marketing plan. See Exhibit C-1: *Tourism Strategic Marketing Plan*.

The web plan should address search engine optimization, incorporate an annual editorial schedule that includes proposed monthly features focusing on events, activities and destinations, and must identify specific web measurements that will be utilized to determine performance. The web strategic plan must be developed at the direction of the Department and in cooperation with all other contractors that have responsibility for tourism marketing activities. The annual plan shall specify anticipated costs and timelines for completed projects. The plan may be modified as directed by the Department.

- B. At the direction of the Department, implement specific components of the comprehensive web development plan including some or all of the following:
 1. Implement the annual editorial schedule in collaboration with the Tourism Office Public Relations Program and its Contractor(s).
 2. Develop and, if requested by the Department, manage an online photo library for the Tourism Office that may be used by all units of the Department.
 3. Identify, obtain and license for use by the Department all photography for the photo library or for use throughout all websites. Assist the Department in developing a photo management system so that all photography is cataloged, and posted on the appropriate web location. Develop and, as directed by the Department, implement or provide a content management system for ongoing photography updates on all tourism websites.
 4. As directed by the Department maintain and/or modify the current CMS that provides logistical data, copy and photos on public listings (via an HTML-based WYSIWIG interface) as well as general administrative services (such as user management, control over publications processes. Contractor will maintain the CMS's current "Point-of-Interest" architecture on www.experienceWA.com to support "points of interest" throughout the state. (Note: A "point of interest" is a business, landmark, or other geo-coded location within the state). In collaboration with public relations program and its contractor(s), continue to create and publish point of interest pages including all photography for each Point of Interest Page.

5. As directed by the Department, modify the current GIS mapping program that provides an interactive mapping capability linking all website content, including tourism business links to specific map locations.
6. As directed by the Department and in collaboration with the Tourism Advertising Program and its Contractor(s) modify graphic elements on all sites to ensure adherence to brand graphic standards
7. If requested by the Department, advise and/or develop and implement online marketing or advertising programs to increase traffic to all web sites at the direction of the Department, contact, analyze, recommend, and/or negotiate interactive marketing programs. Produce or assist the Department in developing or producing specific print, broadcast and/or electronic marketing materials and upon Department approval of these materials, place them in paid and /or unpaid state, regional, national, international or electronic media approved by the Department.
8. At least monthly review, provide analysis and publish all results of the tourism website traffic activity utilizing WebTrends and ClickTracks.
9. Develop and/or oversee an online consumer survey. At least monthly analyze and provide a report on the survey results. Provide a system to maintain the database of email addresses from consumers who have opted in to receive follow-up surveys or special promotional opportunities via email.
10. Provide recommendations and any technical assistance needed to re-locate sites for a different hosting environment.
11. At the direction of the Department, participate in routine meetings and planning sessions with the Tourism Office and with any Tourism Advisory Committee or Tourism Commission, other units of the Department, other Tourism Office contractors, and other state agencies, community, national or international tourism promotion or destination organizations.
12. Provide any other content, software development or programming services requested by the Department on a project-by-project basis to improve the functionality, usability or marketability of all websites.
13. As directed by the Department, provide any other services necessary to better integrate the websites of all units in the Department.

Exhibit B-2 - Business and Project Development & International Trade Scope of Work

As directed by the Department, provide the following web development services, on a project-by-project basis, for the websites www.ChooseWashington.com and the International Trade and Economic Development (ITED) portion of www.cted.wa.gov and based upon the Business and Project Development and International Trade marketing plan/strategy (Exhibit C-2.)

1. Extend the existing Microsoft Dynamic CRM implementation to interface with various International Trade and Economic Development websites.
2. Rework functionality of content management tool on ChooseWashington.com.
3. Develop and implement web casting, web conferencing, web blogs, webinars, online training, online proposal and streaming video opportunities.
4. Re-develop ChooseWashington.com website using technology specified in mandatory requirements.
5. Create database-driven economic development client request forms.
6. Integrate CRM functionality into public facing side of www.ChooseWashington.com website.
7. Develop tools for E-Newsletter with editable templates allowing new template creation, file attachment, tracking mechanism, opt-in, opt-out features, internet links, etc.
8. Provide web analytics (clicks, page views) and usability tools to measure and report the effectiveness of programs, events, and campaigns.
9. Provide online screening methods of potential customers to ensure they pre-qualify for ITED products/services.
10. Create a data collaboration tool for partners and customers to access data and information in a secured environment.
11. Provide tools for online customer surveys and feedbacks mechanisms.
12. Develop tool for documentation management.
13. At the direction of the department design/develop architecture, layout, graphics, translation and content management to support multiple languages and format.
14. Provide technical services as needed to fix any application or software problems that affect the functionality of the sites and are not a result of a major site revision or re-build.
15. Provide technical assistance for any site relocation to a different hosting environment.
16. As directed by the Department, provide any other services necessary to better integrate the websites of all units in the Department.

Exhibit C-1 - Tourism Strategic Marketing Plan

In 2004 the Tourism Office convened a statewide tourism summit for the purpose of creating a Strategic Marketing Blueprint. That Strategic Blueprint guided Tourism Office activities through 2006.

http://www.experiencewashington.com/images/pdf/TSP_FinalStrategicBlueprint1204.pdf

With the completion of several of the major initiatives in that Blueprint the Tourism Office is currently in the process of reviewing data and developing a new two-year strategic marketing plan. The initial framework of that plan is under discussion and as it evolves each stage will be reviewed by the Tourism Advisory Committee so it is not yet ready for public release.

However, much of the marketing plan will be based on data and research available through the Tourism Office. Following are data sources that the RFQQ Bidders may wish to review:

- Profile of visitors to Washington State:
http://www.experiencewashington.com/images/pdf/R_VisitorProfileLongwoods2003.pdf
- Statewide Travel Impact Research , 1991-2006p
http://www.experiencewashington.com/images/pdf/R_ImpactStatewide2006.pdf
- Current Tourism Advertising Campaign- creative strategy
http://www.experiencewashington.com/images/pdf/M_AdSchedule07CreativePlan.pdf
- Current Tourism Advertising- Media Plan
http://www.experiencewashington.com/images/pdf/M_AdSchedule07MediaPlan.pdf

All of the above research or information is posted on www.experiencewa.com/industry
There is other information posted on that website that may also be of interest to RFQQ Bidders.

Exhibit C-2 - Business Development and International Trade Strategic Marketing Plan

Business Development and International Trade Strategic Marketing Plan

The Next Washington

In January 2007 Governor Chris Gregoire unveiled a ten-year economic vision to build on the economic success in Washington and seize opportunities for Washington-grown companies. The Governor's plan is entitled *The Next Washington*. The Business Development and International Trade Strategic Marketing Plan is based on Governor Gregoire's *The Next Washington*.

The Next Washington plan acknowledges the unique regional economic needs of the state and lays out specific initiatives to improve workers' skills, connect research universities more directly with private sector and economic-development enterprises, boost telecommunications and energy infrastructure and make it easier to do business with government.

Governor Gregoire's *The Next Washington* plan makes six fundamental assumptions about the workforce in Washington and economic development:

1. Washington is a force in the global economy – we are more like a small nation than just another state;
2. Education is the single most important economic investment we can make;
3. The public sector should lay the foundation to support private sector success;
4. The foundation for success in some cases means providing information and getting out of the way;
5. Government should actively support emerging sectors of our economy like renewable energy and global health; and
6. The modern, global economy is making some old trade-offs, like jobs versus the environment or “sunset industries” and “new economic industries,” irrelevant.

The International Trade and Economic Development Division is taking the necessary steps to prepare to implement *The Next Washington* plan based on current and proposed funding levels.

RFQQ Bidders are encouraged to review *The Next Washington* plan for specific proposed marketing activities including, but not limited to,: Regional Response Teams, Team Washington, Foreign Direct Investment, Ambassador Program, Global Competitiveness Council Recommendations, Washington Exports, Trade Missions and Industry Strategies.

The Next Washington plan can be viewed at:

<http://www.governor.wa.gov/news/news-view.asp?pressRelease=440&newsType=1>

Exhibit D – Draft Contract

CONTRACT NO.

CONTRACT FOR PERSONAL SERVICES
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
AND

This Contract is made and entered into by and between the state of Washington, _____, hereinafter referred to as the "DEPARTMENT," and the below-named firm, hereinafter referred to as "CONTRACTOR."

Contractor Name

Address

City, State, Zip-Code

Phone

Fax

Email

Washington State UBI Number

Federal ID Number

PURPOSE

The purpose of this contract is to provide web marketing/consulting services for all websites within the International, Trade and Economic Development Division of the Department of Community Trade and Economic Development (DEPARTMENT) and other divisions within the DEPARTMENT as needed.

SCOPE OF WORK

- A. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the DEPARTMENT and the CONTRACTOR, and specific obligations of both parties.
- B. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Draft Contract

- C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to [REDACTED], the Contract Manager, in accordance with the schedule above.

PERIOD OF PERFORMANCE

The period of performance under this contract will be from [REDACTED], or date of execution, whichever is later, through [REDACTED].

OFM FILING REQUIREMENT

10-Day Filing

Under the provisions of Chapter 39.29 RCW, this personal service contract [*or amendment*] is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

COMPENSATION

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed [REDACTED] (\$ [REDACTED]). CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

EXPENSES

CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the DEPARTMENT as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$ [REDACTED], which amount is included in the contract total above. Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current state travel reimbursement rates.

BILLING PROCEDURES AND PAYMENT

DEPARTMENT will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Contract Manager [*not more often than monthly.*]

The invoices shall describe and document, to the DEPARTMENT'S satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include reference to Contract No. [REDACTED]. If expenses are invoiced, provide a detailed breakdown of each type. Documentation for all outside services (those services not provided by staff or subcontractors) must accompany all invoices.

Draft Contract

Payment shall be considered timely if made by the DEPARTMENT within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The DEPARTMENT may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the DEPARTMENT.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

Contract Manager for CONTRACTOR:	Contract Manager for DEPARTMENT is:
Contract Mgr Name <input type="text"/>	Contract Mgr Name <input type="text"/>
Contractor Name <input type="text"/>	Department Name <input type="text"/>
Address <input type="text"/>	Address <input type="text"/>
City, State Zip Code <input type="text"/>	City, State Zip Code <input type="text"/>
Phone: (<input type="text"/>) <input type="text"/> Fax: (<input type="text"/>) <input type="text"/>	Phone: (<input type="text"/>) <input type="text"/> Fax: (<input type="text"/>) <input type="text"/>
Email address: <input type="text"/>	Email address: <input type="text"/>

INSURANCE – (NOTE: Include as applicable.)

The CONTRACTOR shall provide insurance coverage as set out in this section *[or as set forth in the Request for Proposals No.]*. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract. The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. **Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. **Automobile Liability.** In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Draft Contract

3. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give DEPARTMENT thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR shall submit to DEPARTMENT within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

ASSURANCES

DEPARTMENT and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations;
- Special Terms and Conditions as contained in this basic contract instrument;
- Exhibit A – General Terms and Conditions;
- Exhibit B – Request for Proposals No. [REDACTED];
- Exhibit C – Contractor's Proposal dated [REDACTED]; and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the DEPARTMENT'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

Draft Contract

THIS CONTRACT, consisting of [REDACTED] pages and [REDACTED] attachment(s), is executed by the persons signing below, who warrant they have the authority to execute the contract.

[CONTRACTOR'S NAME]

COMMUNITY, TRADE AND ECONOMIC
DEVELOPMENT

Signature

Signature

Title

Date

Title

Date

APPROVED AS TO FORM:

Assistant Attorney General

Date

CONTRACT EXHIBIT A
GENERAL TERMS AND CONDITIONS

Definitions

As used throughout this contract, the following terms shall have the meaning set forth below:

“Acceptance” shall mean that the Software has passed its Acceptance Testing and shall be formalized in a written notice from Purchaser to Vendor; or, if there is no Acceptance Testing, Acceptance shall occur when the Products are delivered.

“Acceptance Date” shall mean the date upon which Purchaser Accepts the Software as provided in the section titled **Standard of Performance and Acceptance**; or, if there is no Acceptance Testing, Acceptance Date shall mean the date Vendor delivers the Products.

“Acceptance Testing” shall mean the process for ascertaining that the Software meets the standards set forth in the section titled **Standard of Performance and Acceptance**, prior to Acceptance by the Purchaser.

“Business Days and Hours” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Confidential Information” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, email addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, DEPARTMENT source code or object code, DEPARTMENT security data, or

“Contract” shall mean this document, all schedules and exhibits, and all amendments hereto.

“Delivery Date” shall mean the date by which the Products ordered hereunder must be delivered.

“Department” shall mean the same as Purchaser.

“Effective Date” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Exhibit A” shall mean the RFQQ.

“Exhibit B” shall mean Bidders’ Response.

“Help Desk” shall mean a service provided by Vendor for the support of Vendor’s Products. Purchaser shall report warranty or maintenance problems to Vendor’s Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Installation Date” shall mean the date by which all Software ordered hereunder shall be in place, in good working order.

“License” shall mean the rights granted to Purchaser to use the Software that is the subject of this Contract.

“Order” or **“Order Document”** shall mean any official document and attachments thereto specifying the Software and/or Services to be licensed or purchased from Vendor under this Contract.

“Price” shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.

“Product(s)” shall mean any Vendor-supplied equipment, Software, and documentation.

Draft Contract – General Terms and Conditions

“Proprietary Information” shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Purchaser” shall mean the state of Washington, Department of Community, Trade and Economic Development, any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser.

“Purchaser Project Manager” shall mean the person designated by Purchaser who is assigned as the primary contact person whom Vendor’s Account Manager shall work with for the duration of this Contract and as further defined in the section titled **Purchaser Project Manager**.

“Purchaser Contract Administrator” shall mean that person designated by Purchaser to administer this Contract on behalf of Purchaser.

“Purchaser Contracting Officer” shall mean _____, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Purchaser Contracting Officer acting within the limits of his/her authority.

“RCW” shall mean the Revised Code of Washington.

“RFQQ” shall mean the Request for Qualifications and Quotations used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“Response” shall mean Vendor’s Response to Purchaser’s RFQQ for Services described in this Contract, Exhibit B hereto.

“Schedule A: *Authorized Product and Price List*” shall mean the attachment to this Contract that identifies the authorized Software and Services and Prices available under this Contract.

“Schedule B: *Escrow Agreement*” shall mean the attachment to this Contract containing the Software Escrow Agreement entered into by Purchaser and Vendor.

“Schedule C: *MWBE Certification*” shall mean the attached certificate(s) indicating Vendor’s and/or one or more of Vendor’s Subcontractor’s status as a minority or women’s business enterprise.

“Services” shall mean those Services provided under this Contract and related to the Software License(s) being purchased that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

“Software” shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“Specifications” shall mean the technical and other specifications set forth in the, Exhibit A, any additional specifications set forth in Vendor’s Response, Exhibit B, and the specifications set forth in Vendor’s Product documentation, whether or not Vendor produces such documentation before or after this Contract’s Effective Date.

“Standard of Performance” shall mean the criteria that must be met before Software Acceptance, as set forth in the section titled **Standard of Performance and Acceptance**. The Standard of Performance also applies to all additional, replacement or substitute Software and Software that is modified by or with the written approval of Vendor after having been accepted.

Draft Contract – General Terms and Conditions

“Subcontractor” shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“Vendor” shall mean _____, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“Vendor Account Manager” shall mean a representative of Vendor who is assigned as the primary contact person whom the Purchaser _____ Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

“Vendor Contracting Officer” shall mean _____, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

“Work Product” shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Access to Data

In compliance with RCW 39.29.080, the CONTRACTOR shall provide access to data generated under this contract to DEPARTMENT, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions and recommendations of the CONTRACTOR’S reports, including computer models and methodology for those models.

Advance Payments Prohibited

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the DEPARTMENT.

Amendments

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

Assignment

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the DEPARTMENT.

Attorneys’ Fees

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

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Confidentiality/Safeguarding of Information

The CONTRACTOR shall not use or disclose any information concerning the DEPARTMENT, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the DEPARTMENT, or as may be required by law.

Conflict of Interest

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the DEPARTMENT may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the DEPARTMENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the DEPARTMENT shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the DEPARTMENT provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DEPARTMENT makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

Copyright Provisions

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the DEPARTMENT. The DEPARTMENT shall be considered the author of such materials. In the event the materials are not considered “works for hire” under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the DEPARTMENT effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to the DEPARTMENT a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the DEPARTMENT.

The CONTRACTOR shall exert all reasonable effort to advise the DEPARTMENT, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The DEPARTMENT shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The DEPARTMENT shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

Covenant Against Contingent Fees

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The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The DEPARTMENT shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

Date Warranty

Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software (“Date Warranty”). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser’s discretion, Vendor shall send, at Vendor’s sole expense, at least one (1) qualified and knowledgeable representative to Purchaser’s premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser’s premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

Delivery

Vendor shall deliver the Products ordered pursuant to this Contract on or before [specify delivery date], the Delivery Date. For any exception to this Delivery Date, Vendor must notify Purchaser and obtain prior approval in writing. Time is of the essence with respect to delivery and Vendor may be subject to liquidated damages and/or termination of an order or of this Contract and/or other damages available under law for failure to deliver on time.

All deliveries made pursuant to this Contract must be complete. Unless Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser’s Order Document number. Vendor’s delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

Vendor shall maintain a web site from which Purchaser may download the Software. Such web site shall be of a design approved by both Vendor and Purchaser prior to this Contract’s execution. Vendor shall not change such web site without the prior written consent of Purchaser. Time is of the essence with respect to delivery and Vendor may be subject to termination of this Contract and/or other damages available under law for failure to maintain an operable web site.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

Disputes

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with DEPARTMENT.

1. The request for a dispute hearing must:

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- Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name, address, and contract number; and
 - Be mailed to the DEPARTMENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within five (5) working calendar days.
 3. The DEPARTMENT shall review the written statements and reply in writing to both parties within 10 working calendar days. The DEPARTMENT may extend this period if necessary by notifying the parties.
 4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

Duplicate Payment

The DEPARTMENT shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

Governing Law

This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

Indemnification

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract.

"Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend and hold harmless the state for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the state shall not be eliminated or reduced by any actual or alleged concurrent negligence of state or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officials, agents or employees.

Independent Capacity of the Contractor

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the DEPARTMENT. The CONTRACTOR will not hold himself/herself out as or claim to be an

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officer or employee of the DEPARTMENT or of the state of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

Industrial Insurance Coverage

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, DEPARTMENT may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The DEPARTMENT may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the DEPARTMENT under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's right to collect from the CONTRACTOR.

Licensing, Accreditation and Registration

The CONTRACTOR shall comply with all applicable local, state and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

Limitation of Authority

Only the DEPARTMENT or DEPARTMENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the DEPARTMENT.

Noncompliance with Nondiscrimination Laws

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

Nondiscrimination

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

No Surreptitious Code Warranty

Vendor warrants to Purchaser that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code or any Unauthorized Code as defined below. Vendor further warrants that Vendor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict Purchaser's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program

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(or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

Vendor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

Pricing

The total amount expended under this Contract shall not exceed [____] dollars [\$_____].

Vendor agrees to provide the Products and Services at the Prices set forth in Schedule A. No other Prices shall be payable to Vendor for implementation of Vendor's Response.

Upon expiration of Vendor-provided warranty as set forth in the section titled Software Warranty and upon election by Purchaser to receive maintenance and support Services from Vendor, Purchaser shall pay maintenance and support fees to Vendor [calculated at [____] percent (____%) of Vendor's then-current license fee for the Software Product –OR– at the Prices set forth below or in Schedule A –OR– other reasonable amount/method of calculation].

Prices must not be increased during the initial term of the Contract. If Vendor reduces its Prices for any of the Software or Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.

At least one hundred twenty (120) calendar days before the end of the then-current term of this Contract, Vendor may propose license fees and Service rate increases by written notice to Purchaser Contract Administrator. Price adjustments will be taken into consideration by Purchaser Contract Administrator when determining whether to extend this Contract.

Privacy

Personal information including, but not limited to, "Protected Health Information", collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the CONTRACTOR'S unauthorized use of personal information.

Protection of Purchaser's Confidential Information

Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, email addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, DEPARTMENT source code or object code, DEPARTMENT security data, or, or information identifiable to an individual

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that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser's option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser's Confidential Information.

Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with Review of Vendor's Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Publicity

The CONTRACTOR agrees to submit to the DEPARTMENT all advertising and publicity matters relating to this contract wherein the DEPARTMENT'S name is mentioned or language used from which the connection of the DEPARTMENT'S name may, in the DEPARTMENT'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT.

Records Maintenance

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the DEPARTMENT, personnel duly authorized by the DEPARTMENT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

Registration with Department of Revenue

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

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Right of Inspection

The CONTRACTOR shall provide right of access to its facilities to the DEPARTMENT, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

Savings

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the DEPARTMENT may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the DEPARTMENT'S discretion under those new funding limitations and conditions.

Severability

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

Shipping and Risk of Loss

Vendor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After delivery, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Vendor's fault or negligence.

Site Security

While on DEPARTMENT premises, CONTRACTOR, its agents, employees or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

Software Ownership

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor hereby warrants and represents to Purchaser that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide. Vendor represents and warrants that Vendor has the right to license the Software to Purchaser as provided in this Contract and that Purchaser's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights worldwide. Vendor represents and warrants that: (i) Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

Software Warranty

Vendor warrants that the Software shall be in good operating condition and shall conform to the Specifications for a period of [ninety (90) days, the Warranty Period. This Warranty Period begins the

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first day after the Acceptance Date. Vendor shall replace all Software that is defective or not performing in accordance with the Specifications, at Vendor's sole expense.

Subcontracting

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the DEPARTMENT. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the DEPARTMENT for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law.

Survivorship

All license and purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; License Grant; Software Ownership; Software Code Escrow; Ownership/Rights in Data; Data Warranty; No Surreptitious Codes Warranty; Vendor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability**, and shall survive the termination of this Contract.

Taxes

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

Termination for Cause

In the event the DEPARTMENT determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the DEPARTMENT has the right to suspend or terminate this contract. Before suspending or terminating the contract, the DEPARTMENT shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The DEPARTMENT reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the DEPARTMENT to terminate the contract. A termination shall be deemed a "Termination for

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Convenience” if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the DEPARTMENT provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

Termination for Convenience

Except as otherwise provided in this contract, the DEPARTMENT may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the DEPARTMENT shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

Termination Procedures

Upon termination of this contract, the DEPARTMENT, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The DEPARTMENT shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the DEPARTMENT, and the amount agreed upon by the CONTRACTOR and the DEPARTMENT for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the DEPARTMENT, and (iv) the protection and preservation of property, unless the termination is for default, in which case the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract.

The DEPARTMENT may withhold from any amounts due the CONTRACTOR such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability. The rights and remedies of the DEPARTMENT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT, the CONTRACTOR shall:

5. Stop work under the contract on the date, and to the extent specified, in the notice;
6. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
7. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
8. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DEPARTMENT to the extent DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
9. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the contract had been completed, would have been required to be furnished to the DEPARTMENT;
10. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT; and

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11. Take such action as may be necessary, or as the DEPARTMENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the DEPARTMENT has or may acquire an interest.

Treatment of Assets

1. Title to all property furnished by the DEPARTMENT shall remain in the DEPARTMENT. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the DEPARTMENT upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the DEPARTMENT upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the DEPARTMENT in whole or in part, whichever first occurs.
2. Any property of the DEPARTMENT furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the DEPARTMENT, be used only for the performance of this contract.
3. The CONTRACTOR shall be responsible for any loss or damage to property of the DEPARTMENT that results from the negligence of the CONTRACTOR or that results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
4. If any DEPARTMENT property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the DEPARTMENT and shall take all reasonable steps to protect the property from further damage.
5. The CONTRACTOR shall surrender to the DEPARTMENT all property of the DEPARTMENT prior to settlement upon completion, termination or cancellation of this contract.
6. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

Waiver

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the DEPARTMENT.